

Remarks:

1. Applicant has amended the abstract of disclosure to conform to proper language and format.
2. Applicant has rewritten claims to define the invention more distinctly and particularly in order to overcome technical rejections and define the invention patentability over the prior art.

Claim Rejections Under 35 U.S.C § 102(b) .

a. Applicant requests reconsideration and withdrawal of rejection under 35 U.S.C §102(b) .

Please note that the claims have been rewritten to clearly distinguish applicant's invention from the cited reference Walters. Applicant recites many novel features absent in Walters' reference. Thus, applicant should be cleared from 35 U.S.C § 102(b) claim rejections.

3. Claim rejections Under 35 U.S.C § 103(a) .

b. Applicant requests reconsideration and withdrawal of rejection as being unpatentable over Gehrke.

Claims 1-4, 7-9, 13-16, 17-21 have been rewritten to clearly distinguish applicant's invention. Additionally, there is no justification in Gehrke or in any other prior art separate from applicant's disclosure which suggest that Gehrke can modified in the manner suggested to reproduce applicant's device.

Applicant also requests reconsideration of this rejection for the following further reasons:

(i) Applicant's invention discloses different limitations from Gehrke. There is little similarity between limitations disclosed by Gehrke and limitations disclosed by Williams.

Gehrke discloses a leg elevator with three adjustable means: height adjustment mechanism for adjusting the height of lower leg support above the base; upper leg adjustment mechanism for adjusting distance between the upper leg end of base and the lower leg support; and, an angle adjustment mechanism used to adjust the relative angular orientation of upper leg platform relative to lower leg support. Applicant claims a combination abdominal and

pectoral muscles exercise device with a buttocks adjustable means; and, a seat restraint means selectively attached to the sitting component frame. In applicant's device, a user may adjust the position of their buttocks by moving the seat slightly forward or backwards in a straight horizontal movement. Applicant, does not claim or suggest a leg adjustable mechanism, an upper leg adjustment mechanism or an angular adjustment mechanism. Gehrke does not disclose or suggest a buttocks adjustable means or a seat restraint means across the user's hip.

(ii) Gehrke discloses a collapsible device. Gehrke's device is made from materials that can easily be collapsed for easy storage such as under a patient's bed in a hospital. Applicant does not claim a collapsible device. Applicant's device is a rigid and sturdy non-collapsible device.

Gehrke's system is recommended for substantially unwell users such as patients after an operation. Applicant's device requires the user to utilize their own weight for resistance during exercise and thus, applicant's device is unsuitable for users that cannot provide resistance using their own body such as many patients after surgery.

(iii) Gehrke solves a different problem from Williams.

Gehrke discloses a leg elevator system that allows the user to adjustable the device by three different and independent means in order to properly elevate and rest the leg and promote healing. Applicant discloses an exercise machine for pectoral and abdominal muscles with little risk of injury to the user. Thus, Gehrke and applicant teach different solutions to different problems.

(iv) Applicant's invention is classified in a crowded art therefore, a small step forward should be regarded as significant. Applicant's novel invention provides a non-complicated device that allows user to safely exercise their abdominal and pectoral muscles with no additional weights.

(v) Further, if applicant's invention were in fact obvious in view of Gehrke, because of it's advantages, those skilled in the art would have implemented applicant's invention by now. Applicant's device has not been implemented before, thus it is not obvious to those skilled in the art in view of Gehrke.

(vi) Gehrke teaches away from applicant's invention.

Gehrke, by implication teaches a device to elevate and rest

the leg to promote better health. Williams, teaches a device for exercising the abdominal and pectoral muscles to promote better health. In Gehrke by implication user rests the leg in a particular position in order to obtain maximum benefit of the device. In Applicant's device, user must move their abdominal or pectoral muscles several times at particular positions in order to utilize applicant's device. Thus, clearly Gehrke and Applicant do not teach the same invention.

(vii) Gehrke as a reference against applicant is a strained interpretation that could be made only by hindsight. Gehrke's device uses different materials than Applicant, Gehrke's device solves a different problem from applicant's device. Gehrke's users have different health profiles from applicant's users. Gehrke's device does not suggest directly or by implication that it could be manipulated to function in any way similar to applicant's device, and Gehrke's system is not similar to Applicant's device by any stretch of imagination.

(viii) Applicant has disclosed in his invention the importance of providing a rigid, sturdy and firm support for the combination abdominal and pectoral exercise device.

Applicant has disclosed that his invention includes an "H" shaped rigid frame which when in operation requires resistance provided by the user's own body weight. The "H" shape provides specific positions of attachment to provide suitable support necessary for Williams' device. It is clear to one skilled in the art that the "H" shaped rigid frame provides better support than many other shaped rigid frames. Therefore, directly or by implication applicant has disclosed and claimed that the "H" shaped frame provides several advantages in his device.

(viii) Any shape frame would not be appropriate for applicant's device. Applicant has disclosed that his invention requires no additional weights. Thus, directly or by implication in order for the user to comfortably and safely operate applicant's equipment, the user must have firm support and the equipment must not tip while in use. Applicant has also disclosed that his device is a sturdy, easy to manufacture and is suitable to use at home. It is clear to one skilled in the art that when operating applicant's device which has no additional weights, the "H" shaped rigid frame has advantage of providing required support without additional weights compared to many shapes.

Therefore, any shape frame would not be appropriate for applicant's device.

(ix) Additionally, one of applicant's object of the invention is to provide a safe combination pectoral and abdominal exercise equipment. Applicant has also disclosed that adding non-skid members to his invention provides an better support once the equipment rests on the floor. Therefore, it is clear to one skilled in the art that an "H" shaped rigid frame with non-skid members provides better support than other shape frames. Therefore, any frame shape would not be suitable for applicant's device.

c. Claims 1-6, 10-11, 14-22 have been rewritten. Applicant requests reconsideration and withdrawal of prior art references Wilson over Gehrke for the following reasons:

(i) It is well known that in order for any prior art references to be validly combined for use in a prior art 35 U.S.C §103 rejection, the references themselves must suggest that they be combined as it was stated by In re Sernaker, 217 U.S.P.Q. 1, 6 (C.A.F.C. 1983):

"[P]rior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining their teachings."

The suggestion to combine the references should not come from applicant as was stated by Orthopedic Equipment Co. v. United States, 217 U.S.P.Q. 193, 199 (C.A.F.C 1983):

"It is wrong to use the patent in suit [here the patent application] as a guide through the maze of prior art references, combining the right references in the right way to achieve the result of the claims in suit (here the claims pending). Monday morning quarterbacking is quite improper when resolving the question of nonobviousness in a court of law [here the PTO]."

The board stated, in line with these decisions in Ex parte Levengood, 28 U.S.P.Q.2d 1300 [P.T.O.B.A.&I. 1993]:

".....Accordingly, an examiner cannot establish obviousness by locating references which describe various aspects of a patent applicant's invention without also providing evidence of the motivating

force which would impel one skilled in the art to do what the patent applicant has done."

In the present case, there is no valid reason given in O.A. to support the proposed combinations. The prior art references Wilson and Gehrke do not contain any suggestion that they may be combined to produce applicant's device. Wilson discloses a detachable elongated seat which hangs down and remains suspended between two frame members. Applicant claims a horizontally disposed buttocks seat connected to a rectangular sitting component mounted to a rigid planar post. Wilson discloses that his seat can be moved to selectively vary the distance along the dimension of extension from the front to back ends. Applicant's seat is not detachable by user and it is not elongated. Applicant's seat can only be moved slightly horizontally to adjust position of the user's buttocks. Applicant's seat cannot selectively vary the distance along the dimension from front to back ends of the seat like Wilson. In applicant's invention the dimensions of the seat remains the same at all times. Further unlike Wilson's seat which supports more than the buttocks during exercise, applicant's seat is a buttocks seat during exercise.

(ii) If Gerhke adjustable lower leg support was combined with Wilson's exercise chair, the result would not be Williams invention. For instance, unlike Wilson's seat, applicant's buttocks seat is rigid and cannot vary distance between front and back of the seat. Unlike Wilson's seat, applicant's buttocks seat cannot be adjusted by user to change the shape of the seat. Unlike Wilson's seat which hangs down and remains suspended between two frame members, applicant's buttocks seat is rigidly connected to the rectangular sitting component. Unlike Wilson's seating component which is elongated and supports more than the buttocks, applicant's seat is a rectangular seat which only supports the buttocks during exercise.

(iii) Further, unlike Gerke's leg elevator system disclosing three adjustable mechanisms for the leg, applicant claims an abdominal and pectoral muscles exercise devise with an adjustable buttocks seat. Unlike Gerke's leg elevator system which can be adjusted to vary the height of the leg support, applicant buttock's seat can only be moved slightly horizontally and perpendicular to the rectangular sitting component to allow user to adjust the position of their buttocks. Unlike Gerke's leg elevator system which provides an angular adjustment mechanism,

Applicant's buttock's seat can only be moved slightly horizontally and perpendicular to the rectangular sitting component. Unlike Gehrke's leg elevator system which is substantially flat for easy storage, applicant's invention included rigid frames, bars and a seat are not substantially flat.

(iv) The combination suggested, despite the fact that even if combined Wilson and Gerhke would not result in applicant's invention, combining Wilson and Gehrke would require several series of separate and awkward steps that are too involved to make the combination obvious.

In Gehrke, at least one telescopic leg is required for the height adjustment mechanism. More telescopic legs in Gerhke provide more strength and stability in holding the proper elevated position. In Wilson, to provide strength and stability two rigid frame members which are parallel and held apart by three rigid transverse connecting members are provided. To adjust telescopic leg in Gerhke, the raised portion of the U shaped member is moved to a very precise position to create necessary tension in order for the adjustment mechanism to work. Gerhke employs a spring positioned inside the telescopic leg. Wilson on the other

hand, discloses frames, with stubs for receiving specific extensions and specific extensions fitting slidably into specific stubs. The connecting members in Wilson are attached to precise positions on the frames provide non linear points of attachment on the frames forming a triangle which as a result maintain the parallel relationship of the frames with little lateral movement. Wilson requires durable sturdy materials for the frame such as steel tubing. In contrast, the preferred materials for Gerhke's system are lightweight plastic tubing such or lightweight aluminum. Applicant's device as claimed is drastically different from both Gerhke and Wilson and bears little resemblance or relation with cited references. Applicant's device could not possibly be made from Gerhke and Wilson.

Wilson's seat includes a seat anchor which fits through a loop at the back end of the seat extending across a chair and under frame members. A second seat anchor also extending across the chair, is placed through a loop at the front of the seat. To hold the second seat anchor in place, force is transmitted along the seat from the weight of seat and the weight of the user seated in the seat. In Wilson to adjust the seat for comfort or posture, the user must lift

some weight off of the seat and move the second anchor up or down. The user must then seat back upon the seat, thereby resulting in the front of the seat being held back in place. Applicant's invention requires the user to adjust the seat by moving the seat horizontally. In the applicant's device user's weight is not required in order to adjust the seat to a proper position.

Therefore, Wilson in further view of Gehrke cannot be a valid 35 U.S.C §103(a) rejection for applicant's invention.

d. Claims 23-24 have been rewritten. Applicant requests reconsideration of prior art references Wilson and Gehrke and further in view of Chen for the following reasons:

In the office action (p.4) there is no valid reason given to support the fact that Wilson and Gehrke and further in view of Chen make applicant's invention unpatentable. In Ex parte levengood, 28 U.S.P.Q. 2d 1300 (P.T.O.B.A&I. 1983) the Board stated:

".....That which is within the capabilities of one skilled in the art is not synonymous with obviousness.....That one can reconstruct and/or explain the theoretical mechanism of an invention by means of logic and sound scientific

reasoning does not afford the basis for an obviousness conclusion unless that logic and reasoning also supplies sufficient impetus to have led one of ordinary skill in the art to combine the teachings of the references to make claimed invention.."

The fact that office action notes that combining three different references namely Gehrke, Wilson and Chen is necessary to produce applicant's invention is evidence that applicant's invention is not obvious to one skilled in the art. Applicant also submit that the fact that the combination of the references produces advantages militates in favor of applicant because it proves that combination produces new and unexpected results and is hence nonobvious to one skilled in the art.

Even if Gehrke, Wilson and Chen were combined in the manner proposed, the combination would not show all of the novel features of applicant's invention. For instance non-skid members in Chen are different and serve a different purpose than non-skid members in applicant's invention. Applicant, therefore submit that combining references suggested is not legally justified and is improper.

Accordingly, applicant respectfully requests that claim rejections based on Gehrke, Wilson and Chen be withdrawn..

Conclusion:

For all of the above reasons, applicant submits that the specification and the claims are now in proper form, and that all claims are patentable over prior art. Therefore applicant submits that this application is now in condition for allowance, the action which applicant respectfully solicits.

Conditional Request for constructive Assistance

Applicant has amended the specification and claims of this application so that they are in proper form and define novel features which are also unobvious. If, for any reason this application is not believed to be in full condition for allowance, applicant respectfully request

that constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. § 2173.02 and § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible without need for further proceedings.

Very respectfully,

 1/18/06

Elizabeth Waiguchu, Patent Attorney for applicant

Elizabeth Waiguchu, Patent Attorney

3340 Peachtree Road, suite 1800

Atlanta, GA 30326

Tel 404-376-6694/253-250-8776 email: ewaiguchu@comcast.net

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